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IN THE

Supreme Court of the United States

October Term, 1953

No. 678

PURITAN CHURCH—THE CHURCH OF AMERICA, and PURITAN CHURCH BUILDING FUND, *Petitioners,*

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PURITAN CHURCH—THE CHURCH OF AMERICA
PURITAN CHURCH BUILDING FUND
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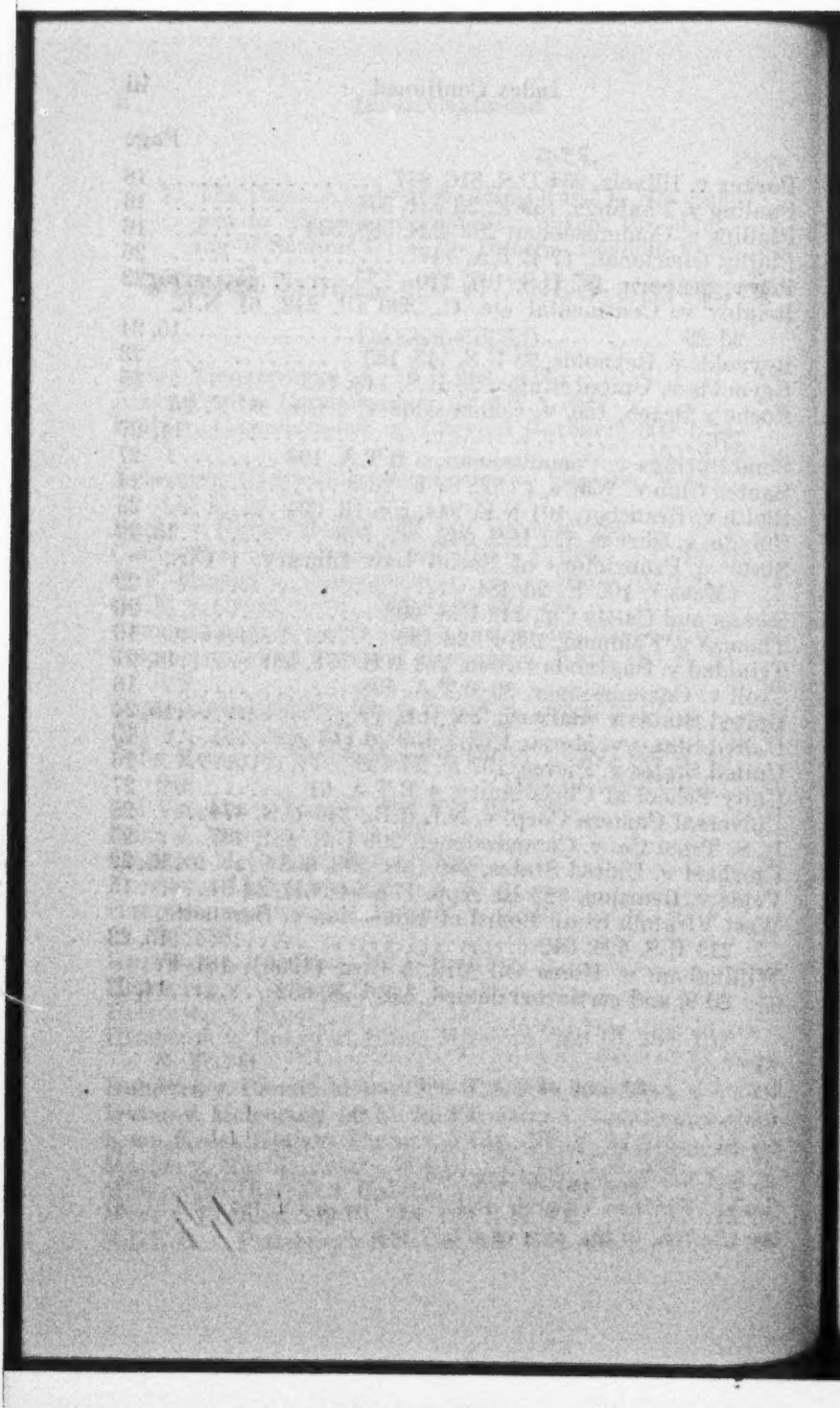
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No.

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vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Puritan Church—The Church of America and Puritan Church Building Fund, respectfully pray that a Writ of Certiorari issue under the seal of this court to review the decision of the United States Court of Appeals for the District of Columbia Circuit, which affirmed a judgment of the Tax Court of the United States against petitioner, Puritan Church—the Church of America for income taxes in the amount of $28,874.22 and penalties of $21,855.68, aggregating $50,729.90, and against petitioner, Puritan Church Building Fund, as transferee of the Church, in the sum of $50,729.90.

JURISDICTION

Jurisdiction to review this case upon Writ of Certiorari is conferred upon this court by 28 U.S.C. Sec. 1254 (1), (Supplement V, 1946 Ed.).

The date of the judgment sought to be reversed is November 5, 1953. Petition for a rehearing was filed November 20, 1953, and denied December 11, 1953. The time for filing petition for Writ of Certiorari in this Court was March 11, 1954; it was extended by an order of the Chief Justice, to and including April 11, 1954.

STATUTES INVOLVED

Internal Revenue Code:

Sec. 22 (26 U.S.C. 1946 ed., Sec. 22)
Sec. 23 (26 U.S.C. 1946 ed., Sec. 23)
Sec. 52 (26 U.S.C. 1946 ed., Sec. 52)
Sec. 53 (26 U.S.C. 1946 ed., Sec. 53)
Sec. 56 (26 U.S.C. 1946 ed., Sec. 56)
Sec. 62 (26 U.S.C. 1946 ed., Sec. 62)
Sec. 101 (26 U.S.C. 1946 ed., Sec. 101)
Sec. 271 (26 U.S.C. 1946 ed., Sec. 271)
Sec. 272 (26 U.S.C. 1946 ed., Sec. 272)
Sec. 273 (26 U.S.C. 1946 ed., Sec. 273)
Sec. 291 (26 U.S.C. 1946 ed., Sec. 291)
Sec. 293 (26 U.S.C. 1946 ed., Sec. 293)
Sec. 311 (26 U.S.C. 1946 ed., Sec. 311)
Sec. 1112 (26 U.S.C. 1946 ed., Sec. 1112)
Sec. 1141 (26 U.S.C. 1946 ed., Supp. II, Sec. 1141)
Sec. 3614 (26 U.S.C. 1946 ed., Sec. 3614)
Sec. 3615 (26 U.S.C. 1946 ed., Sec. 3615)
Sec 3633 (26 U.S.C. 1946 ed., Sec. 3633)
Sec. 3654 (26 U.S.C. 1946 ed., Sec. 3654)
Sec. 3791 (26 U.S.C. 1946 ed., Sec. 3791)

Revised Statutes of Illinois (1953):

Sec. 164 (Title 32)
Sec. 165 (Title 32)
Sec. 175 (Title 32)
Sec. 401 (Title 120)

OPINIONS BELOW

The opinion of The Tax Court of the United States is found on page 67 of the record. The per curiam opinion of the United States Court of Appeals for the District of Columbia Circuit is reported in 209 F. 2d 306 and printed at page 110 of the record.

QUESTIONS PRESENTED

1. Whether petitioner, the Church, is exempt from the income tax within the provisions of Section 101(6) of the Internal Revenue Code during the years of 1945, 1946 and 1947?

2. Whether the petitioner, the Church, during those years received taxable income within the meaning of the Internal Revenue Code?

3. Whether the respondent determined correctly the net taxable income of the petitioner, the Church, for the period here involved?

4. Whether petitioner, the Church, is liable for the penalty for failure to make and file income tax returns in compliance with Section 291(a) of the Internal Revenue Code?

5. Whether all or any part of the deficiencies in tax against the petitioner, the Church, for the years of 1945, 1946 and 1947, was due to fraud with intent to evade the income tax within the meaning of Section 293(b) of the Internal Revenue Code?

6. Whether the Puritan Church Building Fund is a transferee of petitioner, Puritan Church of America?

7. Whether The Tax Court of the United States has jurisdiction to determine the religious status of the petitoner, the Church?

STATEMENT OF THE MATTER INVOLVED

This litigation concerns income tax deficiencies, delinquency penalties, and fraud penalties, determined against both petitioners by the courts below.

Acting pursuant to Title 32, Section 164 et seq. of 1953 revised statutes of the State of Illinois, direct descendants of Deacon Thomas Parker who founded the Puritan Church in "the colonies", at Reading, Massachusetts, in the year 1645, organized themselves and their successors, for the first time on American soil, into a religious society which they designated, the Puritan Church—The Church of America. (Trs. 74, 478, 496, 497, 519 to 523, 829; Respondent's exh. R.R.).

The purpose of the organization is set forth in its by-laws as follows (R. 72):

> "This organization was founded as a means of disseminating through the U. S. Mails and otherwise, the revelations of God vouchsafed to its members, on religious, educational, political, benevolent, fraternal, charitable and reformatory subjects, the study of which will cause in the individuals who practice them, a mental development along scientific lines."
>
> "In addition to promoting the above idea, the objects of this society, are to promote unqualified allegiance to the general government, protect the rights and liberties of American citizenship, and maintain national honor, union, and independence."

The objective of the organization was to proselyte the natural religion of Jesus to the 30 million persons in the United States who do not attend any church. (Trs. 24, 25, 531 to 535; Petitioner's Exh. 14, 15, 35).

During the period which was under the scrutiny of the courts below, neither petitioner sold either commodities, or services. The Church's entire revenue was derived from free will donations, tithes and loans. (Trs. 26, 29, 37, 39, 279, 280, 309, 310, 311, 501, 529, 534, 538, 561, 569, 570, 580, 636, 639, 703, 731, 732, 796).

Petitioner, the Church, mailed Bibles and its religious literature throughout the country, but the recipients thereof were not required to pay for what they received. (Trs. 540, 546, 548, 550 to 561, 569, 575, 584; Petitioner's Exh. 11, 19, 23, 24, 25, 26, 27, 29, 33, 34, 58, 62).

On March 27, 1946, in response to an inquiry from the petitioner, the Church, about its liability for Social Security taxes, the Collector at Chicago notified the Church in writing, that it was exempt of Social Security taxes. (Petitioner's Exh. 8).

In The Tax Court, Claude H. Hill, Deputy Collector at Chicago, a witness for the respondent, testified:

> "Exemption from Social Security would depend on whether or not an exemption had been granted from filing income tax returns * * * The exemption from F.I.C.A. meaning Social Security is predicated upon an exemption from the filing of income tax returns on the form which the Collector requires for exemption under 101(6)." (Trs. 233).

The Church advertised for donations to its established Bible and established Building Trust Funds. (Trs. 536 to 538, 544, 581, 582). One hundred thousand (100,000) persons (trs. 550) read the advertisement, accepted its terms and answered with donations "ear-marked" for use in the trust fund of their selection.

(Petitioner's Exh. 28)

"98 Westview,
Springfield, Vt.
Aug. 8, 1947

The Puritan Church,
La Grange, Ill.

Dear Chancellor,

Enclosed please find money order for fifteen ($15.00) dollars for use in your Bible fund.

I am very happy to be able to send you this and truly hope to be able, as time passes, to add much more to this.

Your sincere friend and member,

KENNETH R. LA FRANCE"

(Petitioner's Exhibit 25)

"Wilmington, N. C.
May 10, 1947

The Chancellor
Puritan Church,
La Grange, Ill.

Dear Chancellor,

I am enclosing herewith cash $3.00 two for the next lesson, and one dollar as a small contribution to the Puritan Church.

Words cannot express the good the Puritan Church has done for me. I certainly am in the faith with you, and have learned more about religion, and the Bible through your studies than I have ever learned before. Yes, I am a Puritan, thank God, and may God bless you in your work in telling and teaching people the Truth.

Yours faithfully,

Oscar Pearsall
Box 626
Wilmington, N. C.

/s/ OSCAR PEARSALL"

On December 10, 1947, the trustees of the Puritan Church directed their only bank at Montague, Michigan, to sequester on its books into a Special Account to be designated "Puritan Church Building Fund", the amount of money derived from such donations, which, since September 6, 1947 and before, had been carried on the Church's books under the accounts of "Puritan Church Building Fund" and Bible Fund (Tr. 124; R. 82); along with the

order to separate the trust funds from the church's regular funds, the trustees sent new signature cards; withdrawals from the Puritan Church Building Fund henceforth could be made only by the joint signatures of both trustees (Respondent's Exh. G; Tr. 124); the church's Chancellor's signature was not good on this trust fund; the lone signature of either the Chancellor, or either of the trustees, was still good on its general account. On December 10, 1947 a complete separation of the Bible and Building Trust Funds in its bank, was made by the trustees of the Church. By these overt acts, all its servants, the bank, the world and the United States Government, were "on notice" that the Bible and Building Trust Funds in the Puritan Church Building Fund were *not* and had never been a part of the assets of the Puritan Church—The Church of America.

U. S. Postal Inspector V. V. Sugg, a witness for the respondent, (Trs. 306), testified:

> "Mr. Parker said he would instruct the bank to show me the records of the trust account; I was also interested in the main account; I went over to the bank; those records were made available to me. I ascertained from the banker how much was on deposit in both accounts".

On pages (Trs. 134 to 139) of the same court record, respondent's witness, Anderson, the President of the Montague Bank, testified that the Puritan Church Building Fund in his bank was separate and apart from the "general account" of the Puritan Church at the same bank.

On March 16, 1948, the Puritan Church Building Fund a trust, was created under the common law, to protect $156,495.29 which had been donated to the Church for use either in its Bible, or its Building Fund and nowhere else.

It is undenied and undisputed in the evidence in the tax court record, that every cent in this $156,495.29 Puritan Church Building Fund, had its origin in the trust established in Anita Bird and Edith S. Parker, trustees, by Kenneth La France, and 100,000 other persons (Tr. 559,

560). It is also undenied and undisputed in the tax court record, that all of the money in this $156,495.29 trust fund, upon its receipt, upon the orders of its trustees, was "ear-marked" as a trust fund and "ear-marked" every time it was "handled" (Tr. 572 to 579).

Later the Montague Bank received an anonymous letter (Tr. 139, 138). Upon its receipt, the Montague Bank, directed the Church to withdraw its accounts from the bank. There was at this time, in the General Fund of the Church and in the separate Trust Account, a total credit balance of $176,279.97 (R. 102). At this time, one of the trustees was age 71, and the other age 65; it was not convenient or safe for them to carry $176,279.97, in cash, in the pockets of their dresses.

In that situation, under friendly arrangements with the bank, the trustees "cleaned out" every cent in the account, on the banks books, known as the Puritan Church Building Fund (Tr. 132, 133). In complete liquidation of this account, the bank handed, and the trustees accepted, two cashier's checks, one for $150,000.00 and one for $6,495.29; these two checks were dated April 10, 1948 and were payable to "Edith S. Parker and Anita Bird, trustees." A scrutiny of the respondent's Exhibit F, reveals that at the time of the issue of the cashier's checks for a total of $156,495.29 payable to Anita Bird and Edith S. Parker, Trustees there was not at the Montague Bank a balance of $156,495.29 in the general account of the church; the $156,-495.29 cashier's checks dated April 10, 1948 had to issue from a balance in the separate account of the Puritan Church Building Fund, in the Montague Bank.

The trustees tendered those two Cashier's checks of a total of $156,495.29, to the Greenwich Trust Company at Greenwich, Connecticut, for deposit (Tr. 144 to 161).

Upon the presentation of the cashier's checks for $156,-495.29 for deposit at the Greenwich Trust Co., Greenwich Conn., the lawyer for the bank said, "Edith S. Parker and Anita Bird, trustees, for what?" "Trustees for the Puri-

tan Church Building Fund", said the ladies; "take it back" said the lawyer for the Greenwich Trust Company, "and have the bank which issued these cashier's checks, make them payable to the trustees for the Puritan Church Building Fund; the issuing bank must have in its bank records, authority to issue cashier's checks payable to Edith S. Parker and Anita Bird, trustees of the Puritan Church Building Fund." Accordingly, the ladies returned to the issuing bank at Montague and had the cashier's checks dated April 10, 1948, exchanged for two cashier's checks dated May 13, 1948, for $156,495.29 payable to Edith S. Parker and Anita Bird, trustees of the Puritan Church Building Fund (Tr. 132).

For reasons of their own, and within their authority as trustees, the ladies held these latter cashier's checks in their possession until June 7, 1948. Then, they were deposited, plus $4.71, into the newly opened account of the Puritan Church Building Fund at the Greenwich Trust Company (Tr. 144-161).

Over a year after the money of the Puritan Church Building Fund was in the channels of commerce; more than three years after the Collector at Chicago had officially declared in writing, that the petitioner, the Church was a religious organization, the agent of that same Collector, a witness for the respondent in the tax court, under oath, testified:

> That only by a violation of Sections 3654, 291(a), 293 (b) Title 26 Internal Revenue Code, was he personally able to determine that the net taxable income of the petitioner, Church, was 100% of its gross bank deposits, plus 50% for fraud, plus 25% for not having made a return. (Trs. 180 to 224, 468 to 474, 787 to 791; 306 to 308, 359, 360; 630, 631).

Upon such a determination of net taxable income of the petitioner, the Church, a "Deficiency Notice" for $315,359.66 issued against it, a "Jeopardy Assessment" for $156,495.29 issued against the Puritan Church Building

Fund and an "Attachment" issued from the respondent, against the otherwise free and clear $34,500 building site for a Puritan Church at Washington, D. C. (R. 122).

Upon the authority of such a "Jeopardy Assessment" a Deputy Commissioner of Internal Revenue entered the Greenwich Trust Co., at Greenwich, Conn., and seized $10,000.00 in cash in the account of the Puritan Church Building Fund and "prime" securities of a par value of $92,000; these were taken to the street-corner and sold at public auction for $92,170.84; the proceeds of this sale, plus the $10,000, a total of $102,107.84 was placed in the Treasury of the United States, where it now is subject to the decision of this court in this litigation. (Trs. 48, 49, 52 to 55, 78, 124, 126, 134 to 139, 141 to 161, 245, 259, 306, 448, 546, 556 to 560, 573 to 600, 631, 632, 634 to 650, 664, 713 to 715, 760, 769, 783, 801 to 803, 821; Respondent's Exh. G, H, I, J, K, M, N, O, P, R, P.P., AAAA, HHHH; Petitioner's Exh. 5, 7, 9, 19, 20, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 37, 38, 39, 40, 44, 56, 57).

From such a proceeding by the Commissioner of Internal Revenue for the Government of the United States, the Trustees of the Church sought a sanctuary, and the Trustees of the Trust Fund begged the protection of the law in The Tax Court of the United States.

There, in litigation concerning income taxes of the petitioner, the Church, the trial judge in the decision of the tax court:

1. upheld the law violations admitted on the witness stand, by the agent of the Collector at Chicago;

2. criticized the religion of the Puritans (R. 76, R. 122; trs. 571; Petitioner's Exh. 14;

3. excoriated the Chancellor of the Church for enduring jail in support of law and order which is the religion of the Puritans (R. 68 to 75, 79, 80, 85, 90; Trs. 551, 565, 599, 613, 622, 642, 644, 645, 703, 712, 742, 751 to 756, 778, 783);

4. found that the Church did not keep books (R. 86, R. 94; Trs. 266, 267, 307, 359, 584, 618, 619, 625, 677 to 694, 766);

5. found that the Church did not have a rollbook and did not hold meetings (R. 76; Trs. 45, 278, 519, 736, 763);

6. found incompetent, the Trustees of the Church who had sent the religion of Jesus into prison cells, had gathered a Building Fund of $156,000, (R. 89) and had upheld the law of the State which protects them in the worship of their idea of God (Petitioner's Exh. 35);

7. found that the Trustees of the Church and its officers were guilty of embezzlement and evasion of their personal income taxes (R. 82, R. 86; Trs. 448, 556, 647 to 664, 702, 714, 715, 799, 838; Petitioner's Exh. 35);

8. found that all donations to the Puritan Church were taxable income within the meaning of the Internal Revenue Code (R. 93; Trs. 540, 546, 548, 550, 551, 555, 560, 561, 569, 575, 584; Petitioner's Exh. 19, 22, 25, 27, 29, 30, 31, 32, 33, 34, 36);

9. found that the Trustees had no intention to build a Church (R. 101; Trs. 46, 139, 245, 259, 572, 574, 595, to 600, 760, 768, 776; Petitioner's 39, 40);

10. found that the Trustees had made an ultra vires contract with the J. L. Stewart Advertising Agency (R. 77; Petitioner's Exh. 37; Trs. 47, 48, 576 to 580);

11. found that all open, orderly legal business transactions which are necessary in any going concern with a pay-roll of $1,500 a week, were evidence to prove fraud to evade payment of income taxes (R. 104; Trs. 804 to 839; Respondent's F, G, I, J, K, M, N, O, R, J; Petitioner's 44, 45, 47, 48, 59, 60, 61);

12. annulled Sec. 175, Title 32, Revised Statutes of Illinois (1953) R. 68 to 75);

13. demolished a trust estate (R. 33, R. 86, R. 102, R. 103) and with the following words, confiscated to the

Treasury of the United States as a part payment on income taxes of the Church, the money of 100,000 persons who after the demolition of their trust, were not parties to the litigation in the Tax Court, nor were they represented in it by counsel:

"Now, therefore, it is ORDERED and DECIDED: That there are deficiencies in income tax and penalties as follows:

Year	Deficiency	25% Penalty	50% Penalty
Period Oct. 14, 1945 to Dec. 31, 1945	$ 550.00	$ 137.50	$ 275.00
1946	4,284.95	1,071.24	2,142.48

all of which amounts have been paid by the Puritan Church Building Fund, transferee; that for the calendar year 1947 there are deficiencies in income tax and penalties as follows:

Deficiency	25% Penalty	50% Penalty
$24,039.27	$6,009.82	$12,019.64

(Signed) LUTHER A. JOHNSON
Judge

ENTER:
Entered September 28, 1951
Served September 28, 1951

(SEAL)" (R. 105, 106)

This decision of The Tax Court was appealed for a review to the United States Court of Appeals for the District of Columbia; it sustained the decision of The Tax Court in toto, with a per curiam decision (R. 110).

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In affirming the decision of The Tax Court of the United States which held that petitioner, the Church, was not a religious organization within the meaning of Section 101(6) of the Internal Revenue Code, during the years of 1945, 1946 and 1947.

2. In affirming the opinion of The Tax Court of the United States which held that money receipts of petitioner, the Church, from "tithes," "donations," or "contributions," constitute income of the petitioner, the Church, within the meaning of Section 22(a) of the Internal Revenue Code.

3. In affirming the decision of The Tax Court of the United States which refused to allow loans to the petitioner, the Church, in the sums of $12,250.00 and $30,000.00 respectively, as legitimate deductions from taxable income.

4. In affirming the decision of The Tax Court of the United States which held that the respondent's computation of the net taxable income of the petitioner, the Church, upon 100% of its gross bank deposits, without any allowance for expenses, was correct.

5. In affirming the decision of The Tax Court of the United States, which held that the respondent was justified in imposing penalties of 25% and 50% against petitioners, pursuant to Sections 291(a) and 293(b) of the Internal Revenue Code.

6. In affirming the decision of The Tax Court of the United States, which held that petitioner, Puritan Church Building Fund was a transferee of petitioner, Puritan Church within the meaning of Sections 1119 and 311 of the Internal Revenue Code and therefore liable for its income tax liability in an amount not exceeding $156,495.29.

7. In affirming the decision of The Tax Court of the United States, which held that petitioner, Church, was insolvent, and while insolvent transferred $156,495.29, of its own assets to petitioner, Puritan Church Building Fund.

8. In affirming a decision of The Tax Court of the United States, which was not supported by substantial evidence upon a consideration of the entire record.

9. In affirming the decision of The Tax Court of the United States, which is in conflict with decisions of other Court of Appeals and in violation of the rights of the petitioners under the first amendment to the Constitution of the United States.

REASONS RELIED ON FOR GRANTING WRIT

Such grave constitutional issues and questions of public policy are involved in this litigation, that a writ of certiorari should issue out of this court pursuant to Rule 38(5), (b) and (c) of the rules of this court, for the following reasons:

1. The per curiam decision of the United States Court of Appeals for the District of Columbia Circuit deprives the petitioner, the Church, of the income tax exemption granted by the Congress of the United States to all religious organizations which meet the requirements of Sec. 101(6) of the Internal Revenue Code. The decision of the tax court in this litigation is in conflict with the decision of this court in the case of *Trinidad* v. *Sagrada Orden*, 263 U.S. 578 and the decisions of the Court of Appeals for the following circuits:

Santee Club v. *White*, 1 Cir., 87 F. 2d 5
Roche's Beach Inc. v. *Commissioner*, 2 Cir., 96 F. 2d 776
C. F. Mueller v. *Commissioner*, 3 Cir., 190 F. 2d 120
Koon Kreek Klub v. *Thomas*, 5 Cir., 108 F. 2d 616
Willingham v. *Home Oil Mill*, 5 Cir., (1950), 181 F. 2d 9 and certiorari denied, 340 U.S. 852

In determining the question whether the Petitioner, Church, was operated for non religious purposes, or that any part of its net earnings inured to any individual during the years of 1945, 1946 or 1947, the Tax Court was confined by law to proof of violations during those taxable years. The record is barren of any evidence tending to show that Petitioner, Church, was operated for non-religious purposes, or that any of its net earnings inured to any individual during the taxable years in question.

2. The decision of the Court of Appeals for the District of Columbia Circuit, limits the scope of religious freedom guaranteed the petitioner, the Church, under the first amendment to the Federal Constitution and thereby is in conflict with the following decisions of this court:

Reynolds v. *United States,* 98 U.S. 145, 163
Davis v. *Besason,* 133 U.S. 333, 342
Minersville District v. *Gabitis,* 310 U.S. 586, 593
West Virginia State Board of Education v. *Berenette,* 319 U.S. 624, 642
United States v. *Ballard,* 322 U.S. 79
Cantwell v. *Connecticut,* 310 U.S. 296

3. The decision of the Court of Appeals for the District of Columbia Circuit, affirming the decision of The Tax Court of the United States, which declared the trust invalid, is contrary to the law of the State of Illinois, where the Trust was created, and is in conflict with the decision of this court in the cases of *Blair* v. *Commissioner of Internal Revenue,* 300 U.S. 5, *Frevler* v. *Helvering,* 291 U.S. 35, *Uterhart* v. *United States,* 240 U.S. 598, 603, *Poe* v. *Seaborn,* 282 U.S. 101, 110, and *Spindle* v. *Shreve,* 111 U.S. 542, 547, 548, it also ignores and is in conflict with the decisions of the high courts of the State of Illinois in the cases of *Reighly* v. *Continental etc. C.,* 390 Ill. 242, 61 N.E. 2d 29, *Myer* v. *Pfahler,* 362 Ill. 336, 199 N.E. 801, *Marble* v. *Marble Estate,* 304 Ill. 229, 136 N.E. 589 and *Velde* v. *Reardon,* 322 Ill. App. 177, 54 N.E. 2d 91.

4. The decision of the Court of Appeals for the District of Columbia Circuit, affirming the decision of The Tax Court of the United States assessing income tax against a religious and charitable trust, conflicts with the true effect of the decisions of this court in the cases of *Helvering* v. *Clifford,* 309 U.S. 554, *Helvering* v. *Stuart,* 317 U.S. 154, and *Harrison* v. *Shaffner,* 312 U.S. 579; it conflicts with the decision of the Court of Appeals for the first circuit in the case of *United States* v. *Morse,* 1 Cir., 159 2d 142; it conflicts with the decision of the Court of Appeals for the Second Circuit in the case of *Commissioner of Internal Revenue* v.

Katz, 130 F. 2d 107; it conflicts with the decision of the Court of Appeals for the Fifth Circuit, in the case of *Thomas* v. *Feldman*, 158 F. 2d 488, and conflicts with the decision of the Court of Appeals for the Eighth Circuit, in the case of *United States* v. *Pierce*, 137 F. 2d 428.

5. The decision of the Court of Appeals for the District of Columbia Circuit, affirming the decision of The Tax Court of the United States, which held petitioner, Puritan Church Building Fund to be a transferee within the meaning of Section 311 of the code, is in conflict with the decisions of this court in the cases of,

Phillips v. *Commissioner*, 283 U.S. 589, 594 and
Hubburd v. *Commissioner*, 296 U.S. 300, 303, 308,

conflicts with the decision of the Court of Appeals for the Eighth Circuit, in the case of

Irvine v. *Helvering*, 99 F. 2d 265

and conflicts with the decision of the Court of Appeals for the Eighth Circuit in the case of

Pauling v. *Paulings*, 159 F. 2d 531, 534, and the Board of Tax Appeal in *Troll* v. *Commissioner*, 33 B.T.A. 598.

Wherefore, your petitioners respectfully pray that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia Circuit, to the end that this cause may be reviewed and determined by this court, the decision of the Circuit Court of Appeals for the District of Columbia be reversed, and petitioners be granted such other and further relief as may be proper.

Puritan Church—The Church of America
Puritan Church Building Fund
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BRIEF AND ARGUMENT

I

THE OPINION OF THE COURTS BELOW

The opinion of the Tax Court of the United States is found (R. 66). The per curiam opinion of the United States Court of Appeals for the District of Columbia Circuit is reported in 209 F. 2d 306, and is printed in the court record (R. 108).

II

JURISDICTION

1. The jurisdiction of this court is based on 28 U.S.C. Sec. 1254 (1), (Supplement V, 1946 Ed.).

2. The date of the judgment to be reversed is November 5th, 1953. Petition for rehearing was filed November 20, 1953; it was denied December 11, 1953.

3. The time for filing petition for writ of certiorari and brief in this court, was on the 11th day of March, 1954; it was extended by this court, to and including the 11th day of April, 1954.

III

STATEMENT OF THE CASE

The essential facts of the case are fully stated in the accompanying petition for certiorari; in the interest of brevity they are not repeated here. Elaboration on the points involved will be made in the course of the argument.

IV

SPECIFICATION OF ERRORS

The specification of errors have been fully stated in the accompanying petition for certiorari; they will not be repeated here.

V

SUMMARY OF ARGUMENT

(a) The per curiam decision of the Court of Appeals is in a serious conflict with decisions of this court and with Court of Appeals for the first, second and third circuits, in holding that the petitioner, Church, is not a religious or charitable corporation within the meaning of Section 101(6) of the Internal Revenue Code.

The facts in the Tax Court record upon which petitioner's religious status rested, were for all practical purposes un-assailable; it was incorporated as a religious corporation under Title 32, Section 164-165 of the Illinois Statute, January 5, 1946; it was exempt from taxation under Title 120, Section 401 of the Illinois Statute; under Title 32, Section 175, it was permitted to "publish, print, circulate, sell or give away such religious, sabbath school, and missionary tracts, periodicals or books it might deem necessary to the promotion of religion and morality.

The Tax Court ignored this Section of the Illinois statute in holding that petitioner was organized in part to further the personal feud of Parker against the Chicago Tribune.

In *Parker* v. *Illinois*, ~~354~~ 334 U.S. 816, 817, four members of this court felt that the Chancellor of the petitioner, the Church, was acting within his constitutional rights when he addressed to the Cook County, Illinois Grand Jury a letter offering to submit to it certain evidence of corruption. The fact that the Tax Court in its determination, ignored Section 175, Title 32 (R. 75) should command a reviewing court to hold that the decision of the Tax Court is not supported by substantial evidence on the record considered as a whole and that its application of the law is erroneous.

(b) The decisions of the courts below holding in effect that if the chancellor of a religious corporation engages in controversial issues which he believes promotes the re-

ligion of the church or the morality of the community, the religious corporation is not organized exclusively for religious purposes, conflict with decisions of this court, as well as with the decisions of other United States Court of Appeals.

In *Cantwell et al.* v. *Connecticut,* 310 U.S. 296, a Connecticut statute denied to religious organization the right to solicit money, services, subscriptions or anything of value for religious or charitable purposes, outside of the county in which they were organized without the approval of the Secretary of Public Welfare Council. This court struck down the Connecticut statute as a violation of freedom of religion under the First Amendment to the Federal Constitution. The State of Illinois by statute extended to religious corporations, the right to "publish, print, circulate, sell or give away such religious, sabbath school, and missionary tracts, periodicals or books they may deem necessary to the promotion of religion and morality." Yet the courts below, in their decisions, ignored the effect of the Illinois statute, by holding that because the Chancellor of a Church, exercised his rights under the Illinois statutes, the Church, thereby forfeited its rights as a religious corporation within the meaning of Section 101(6) of the Internal Revenue Code. This action by the courts below is of itself sufficient to justify the issuance of the writ of certiorari.

(c) The courts below having decided that no valid trust was created; that the donations for a specific purpose did not constitute trust funds, failed to recognize and apply the law of the State of Illinois. The decisions of the courts below on these points conflict with a long line of cases of this court including *Blair* v. *Commissioner,* 300 U.S. 5. The decisions of the courts below on these points are of themselves sufficient to cause the issuance of the writ of certiorari.

(d) The question as to whether the Puritan Church Building Fund is a transferee within the meaning of Section 1119 (a) and 311 of the Internal Revenue Code, is dependent for solution upon three things, viz:

(1) that the petitioner, the Church, was a tax-payer;

(2) that petitioner, the Church, transferred its own funds to the transferee;

(3) that at the time of the transfer petitioner, the Church, was insolvent or was made insolvent as a result of the transfer.

Section 1119 (a) of the code imposes the burden of proof upon the respondent. The respondent did not meet this burden by showing that the petitioner had on deposit in its bank account $254.81, on May 13th, 1948; the transfer of $156,494.29 from the general fund of the church to the Puritan Church Building Fund was made on February 26th, 1948. The burden is not met by showing that petitioner deposited to its account during the period from January 1, 1948 to June 30, 1948, the sum of $359,054.03. It was incumbent upon respondent to show that the petitioner was insolvent on February 26th, 1948. This the respondent has failed to do. This failure alone is sufficient to warrant the issuance of the writ of certiorari.

ARGUMENT

I. Introductory Statement

The petitioner, Church is a religious organization incorporated under Title 32, Sections 164 and 165 of the Revised Statute of Illinois, 1953 Ed. The petitioner is exempt from Illinois state taxation under Title 120, Section 401. The petitioner is authorized under Title 32, Section 175 of said statute to publish, print, circulate, sell or give away such religious, sabbath school, and missionary tracts, periodicals or books that it may deem necessary to the promotion of religion and morality.

The petitioner, Puritan Building Fund, arose as a result of a campaign, launched by petitioner, Church, in August, 1947, to raise funds for the erection of Puritan Meeting Houses throughout the country. It was created by a Declaration of Trust executed March 16, 1948. (R. 33)

II. There Is a Conflict Between the Decisions Below and the Decisions of This Court Together With Other Court of Appeals on the Question of What Constitutes a Religious Corporation Within the Meaning of Section 101(6) of the Code

This Court construing Section 101(6) of the Internal Revenue Code in the case of *Trinidad* v. *Sagranda Orden*, 263 U.S. 578, 581, said,

> "Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain. Such activities cannot be carried on without money; and it is common knowledge that they are largely carried on with income received from properties dedicated to their pursuit. This is particularly true of many charitable, scientific and educational corporations, and is measurably true of some religious corporations. Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation is created and conducted."

This court also observed in the above opinion that it is not the source of income, but the extent of its destination, that constitutes the ultimate test of exemption.

The opinion of the Tax Court dealt at length with the source and means of petitioner's income. (R. 89, 90, 91). The opinion of the Tax Court in this respect ignored the law of the State of Illinois relative to the writing of letters, publishing periodicals, circulating pamphlets, or even selling any of those articles, which were authorized under Title 32, Section 175 of the Illinois Statute.

The decision of the tax court is based on the erroneous conclusion of its trial judge that writing pastoral letters to compel the observance of the constitution and law by a politically powerful newspaper, was an ultra vires act by the petitioner, the church. Had the trial judge sustained objection of the petitioner to the introduction of these letters, there would not have been in the entire Tax Court record, a peg on which to hang the court's finding, that the petitioner, the church, was not organized and operated as a religious organization: Respondent's exh. R.R. is evidence to prove that the petitioner, the church, was organized exclusively for religious purposes; it is not denied or disputed in the entire Tax Court record; and Respondent's exh. B.B.B. is evidence to prove that the petitioner, the church, was operated exclusively, for religious purposes; it is not denied or disputed in the entire tax court record.

In the case of *State* v. *Proprietors of Social Law Library*, 1 Cir., (Mass.), 102 F. 2d 481, it was held, that, a state statute exempting religious, charitable, scientific, literary and educational institutions from capital stock tax, should be liberally construed; that the status of a corporation as a religious, charitable, scientific, literary or educational institution exempt from capital stock tax must in general be determined from its charter and from its characterization by the state in which it is incorporated. The validity of the petitioner, Church, as to its religious character, has never been questioned under the law of Illinois. The fact that its religious status has never been questioned, under that law, was binding upon the Tax Court in its determination of the religious status of petitioner, Church. This court has so held in *Blair* v. *Commissioner*, 300 U.S. 5; *Frevler* v. *Helvering*, 291 U.S. 35; *Uterhart* v. *United States*, 240 U.S. 598, 603; *Poe* v. *Seaborn*, 282 U.S. 101, 110; and *Spindle* v. *Shreve*, 111 U.S. 542, 547, 548.

In holding that the petitioner, Church, "was formed in part for the purpose of achieving Parker's personal objectives and not exclusively for religious purposes," (R.

88), the Tax Court failed to give adherence to the language of the by-laws of petitioner (R. 72), and the provisions of Title 32, Section 175 of the said Statute of Illinois. Such a decision is reversible error and a review by this Court is the only remedy of the petitioner to obtain a correction of said ruling.

Accord:

Koon Kreek Klub v. *Thomas*, 5 Cir., 108 F. 2d 616; *Willingham* v. *Home Oil Mill*, 5 Cir., (1950), 181 F. 2d 9, and certiorari denied, 340 U.S. 852.

III. The Decision of the Court of Appeals abridges the Rights of Petitioners Under the First Amendment to the Federal Constitution

This Court has always held that the First Amendment to the Federal Constitution guarantees to all, freedom of religion and freedom of speech, limited only, by the judicial expressions of this Court. The Tax Court in its adjustment of tax delinquency determination, is without power to impose restrictions on constitutional rights. Thus, in the case of *Reynolds* v. *Reynolds*, 98 U.S. 145, 163, this Court said:

> "The duty we owe the creator was not within the cognizance of civil government. That to suffer the civil magistrate to intrude his process into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty."

Again in *Minersville District* v. *Gabitis*, 310 U.S. 586, 593, this Court held: that,

> "propagation of the belief is protected whether in church, chapel, mosque, or synagogue, tabernacle or meeting house."

Accord:

West Virginia State Board of Education v. *Berenette*, 319 U.S. 624, 642;

Davis v. *Besason*, 133 U.S. 333, 342;
United States v. *Ballard*, 322 U.S. 78, 86; and
Cantwell v. *Connecticut*, 310 U.S. 296.

IV. The Decision of the Courts Below, Holding That No Trust Was Created by the Establishment of the Puritan Church Building Fund Conflict With Decisions of This Court and Decisions of the High Courts of the State of Illinois

The Tax Court held that no trust was created, (R. 100-101); that in order to create a trust the intention must be clear. In determining the question of the validity or existence of the Puritan Church Building Fund, the Tax Court was bound by the law of the State of Illinois. The holdings of the high courts of Illinois on the question of what constitutes a trust were binding on the Tax Court. The trust created met all the requirements under the Illinois Law.

Blair v. *Commissioner*, 300 U.S. 5. The high courts of the State of Illinois have stated what constitutes a trust in the following cases:

In *Myer* v. *Pfahler*, 362 Ill. 336, 199 N.E. 801; there it was held that a trust is created when no act is necessary to give effect, and again when a trust is fully and finally declared in the instrument creating it.

In *Reighly* v. *Continental Illinois B & T Co.*, 390 Ill. 242, 61 N.E. 2d 29, the court said: That four things constituted a trust in the State of Illinois, viz:

"(1) The subject matter or property embraced in the trust;

(2) the beneficiaries or the persons in whose behalf it is executed;

(3) the nature and quantity of the interest which they have, and

(4) the manner in which the trust is to be performed.

The Tax Court found as a fact (R. 78) that the asserted purpose of the puzzle contest was to raise funds to build

a meeting house. The contributions received from the puzzle contest were immediately sequestered on the books of the church into a special trust fund to be used solely for the purpose of building and equipping Puritan Meeting Houses (Trs. 46-49, 572-589).

In *Smith* v. *Braucher*, 101 N.E. 944, 258 Ill. 604, it was held that a gift for the support of churches or to pay the expense of teaching or preaching religious doctrines, is a gift for charitable use, or a public trust. In *Hitchcock* v. *Board of Home Missions*, 259 Ill. 288, 102 N.E. 741, the court said: a gift to home and missionary societies of church is valid; that a gift for religious purpose is a gift to charity. In the light of the foregoing it was reversible error for the courts below to have held that no trust was created.

Accord:

Burke v. *Burke*, 259 Ill. 262, 268, 102 N.E. 293. Compare *U. S. Trust Co.* v. *Commissioner*, 296 U.S. 481, 487.

V. The Puritan Church Building Fund Is Not Subject to Transferee Liability Within the Meaning of Section 311 of the Internal Revenue Code

In order to determine the Puritan Church Fund, a transferee of petitioner, Church, within the purview of Section 311 of the Code, it was necessary for the respondent to show that petitioner, Church, was a tax-payer within the meaning of the Code, that a transfer of petitioner's own funds were made to the Puritan Church Building Fund, and that the transfer was made while the petitioner was insolvent or that the transfer resulted in the insolvency of petitioner. The record fails to show that petitioner, Church, is a tax-payer within the meaning of the Code. The decisions of this and other courts cited above clearly show that petitioner, Church, is a religious corporation within the meaning of Section 101(6) of the Code.

In *Florence McCall*, 26 B.T.A. 292, The Board of Tax Appeal said: "We have held that the statute places a real burden of proof on the respondent, and that he must establish the liability of the transferee against whom he proposes to proceed." Citing, *Eliza J. Wray*, 24 B.T.A. 94, and Annie Thompson et al., 16 B.T.A. 923.

In *Swann and Cattle Co.*, 148 U.S. 603, and *Phillip Gleichman*, 17 B.T.A. 147, it was held that before proceedings may be brought against a transferee, it must appear that the remedies against the transferor would be of no avail.

In the case of *Annie Troll* v. *Commissioner*, 33 B.T.A. 598, the evidence disclosed that one Charles Troll transferred certain assets to petitioner, transferee herein, on March 1, 1930, that on said date, Charles Troll owed $9,119.87 for deficiencies in tax and penalties assessed by the commissioner, that Charles Troll was unable to pay an existing debt of $608.56, on March 1, 1930. The Commissioner determined that Charles Troll was insolvent on March 1, 1930 when he transferred certain asset to petitioner. The commissioner, on November 13, 1931, assessed against the petitioner, as transferee of the assets of Charles Troll, the said deficiencies in tax and penalties. The Board of Tax Appeal held: "It may be pointed out that we have no evidence to show that Charles Troll had any liabilities at the time of the transfer on March 1, 1930, other than his liability to petitioner and his liability to the Federal government for taxes, penalties and interest." Richard Wunbush, deputy collector testified that at the time he filed the notice of tax lien July 2 and 3, 1930, he made efforts to locate some assets of Charles Troll, but that he was unsuccessful. It is to be noted that the testimony of this witness is not directed toward proving what assets or liabilities Charles Troll had on the date in question, the controlling date, March 1, 1930, but the two dates were more than 4 months later, and therefore it is not sufficient to prove insolvency on March 1, 1930."

Let us compare the above decision with the instant petition. Here the controlling date, the date of the alleged insolvency is May 13th, 1948. This date is two months and 17 days after the transfer was effected. It is unchallenged in the record that petitioner transferred $150,000 to the Puritan Church Building Fund on February 26, 1948. (R. 82, 102). Assuming for the purpose of argument that at the time of the transfer the title was vested in petitioner, Church, it legally follows as a matter of law that when the transfer was consummated and credited at the bank in the name of the Puritan Church Building Fund, that fund was the sole owner of all monies deposited to its account at the bank. The fact that the Montague National Bank made a mistake when this account was closing out, and first made the check payable to an improper payee, does not change the law effecting title upon assignment or transfer of assets. As between transferor and transferee, title to the $150,000.00 vested in the transferee on February 26, 1948. The conclusion is inescapable that no insolvency was established on February 26th, 1948.

See also,

Unity School of Christianity, 4 B.T.A. 61;
Sand Springs v. *Commissioner*, 6 B.T.A. 198;
Hanover-improvement Society v. *Gagne*, 1 Cir., 92 F. 2d 888;
Roches Beach, Inc. v. *Commissioner*, 2 Cir., 96 F. 2d 776;
Commissioner v. *Battle Creek, Inc.*, 5 Cir., 126 F. 2d 405;
Bohemian Gymnastics Assn. etc. v. *Higgins*, 2 Cir., 147 F. 2d 774;
Debs Memorial Radio Fund v. *C.I.R.*, 2 Cir., 148 F. 2d 948;
C.I.R. v. *Orton*, 6 Cir., 173 F. 2d 483, 486.

The Tax Court found that the petitioner, the Church, was insolvent on May 13, 1948; (R. 103) this finding had the legal effect of conclusively showing that the respondent had failed to carry its burden of proof as contemplated under Sections

1119(a) and 311 of the Internal Revenue Code; the actual date of transfer of all of the Trustor's money to the Puritan Church Building Fund was effected on the books of the Montague National Bank, on February 26, 1948, (R. 82). The Tax Court also found (R. 82) that this special account was closed out at said bank on April 12, 1948, both of which said dates preceded May 13, 1948. The contention of the petitioner that it was solvent on all of said dates is corroborated by the finding of the Tax Court that petitioner had deposited in its banks the total sum of $359,094.03 from January 1, 1948 to June 30, 1948. An analysis of the record (R. 82, 83, 84, 85) discloses that during the period of insolvency as found by the Tax Court, the petitioner had converted into securities such as American Express Money Orders approximately $62,500.00. This was liquid assets belonging to petitioner and found as a fact by the Tax Court, but its legal significance was denied by the said Tax Court.

A consideration of the record as a whole causes the conclusion that both the Tax Court and Court of Appeals failed to weigh the evidence as a whole. The instant decisions of the courts below fail to measure up to the standard set by this Court.

The late Chief Justice Hughes said in *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U.S. 197, that, "substantial evidence meant such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, which implied a review of the whole record." In the case of *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, the learned Justice speaking for the court said: "(1) the substantiality of evidence must take into account whatever in the record fairly detracts from its weight." Again this learned Justice speaking for this court in the case of *N.L.R.B.* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, effectively points out in his opinion that legislation was not directed to the mechanics but to the attitudes of judgment.

It is the considered judgment that the *Camera* and *Pittsburgh* cases are directives to United States Courts of Appeals to give more consideration to a review of the record as a whole. The per curiam opinion of the Court of Appeals in the instant case falls far short of the mandate of this Court as reflected in the *Camera* and *Pittsburgh* cases, *supra*.

Moreover, Mr. Justice Roberts said in *Del Vecchio* v. *Bowers*, 296 U.S. 280, 296, that Certiorari will be granted where the statute involved is national in scope and a decision with respect to its enforcement constitutes a precedent of general application.

CONCLUSION

In the light of religious status of the petitioner determined by Title 32, Section 164, 165 of the Revised Statute of Illinois, together with the rights granted it under Title 32, Section 175 of said statute, the guarantees of the First Amendment to the Federal Constitution and the exemption under Section 101(6) of the Internal Revenue Code, petitioners urge that a writ of certiorari be issued to the United States Court of Appeals for the District of Columbia Circuit, to the end that this cause may be reviewed and determined by this Court, that the decision of the United States Court of Appeals for the District of Columbia Circuit be reversed.

PURITAN CHURCH—THE CHURCH OF AMERICA

PURITAN CHURCH BUILDING FUND

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 678

PURITAN CHURCH—THE CHURCH OF AMERICA, AND PURITAN CHURCH BUILDING FUND, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Tax Court (R. 87-105)[1] is not reported. The *per curiam* opinion of the Court of Appeals is reported in 209 F. 2d 306.

JURISDICTION

The judgment of the Court of Appeals was entered on November 5, 1953. (Pet. 2.) A petition

[1] The cases of both taxpayers were consolidated for hearing and decision, and record references are to the joint appendix filed herein by the taxpayers. For convenience the Puritan Church of America is sometimes referred to as the taxpayer Church, while the Puritan Church Building Fund is sometimes referred to as the taxpayer Building Fund.

for rehearing was denied on December 11, 1953. The petition for a writ of certiorari was filed on April 8, 1954, the time for filing having been extended to April 11 by an order of the Chief Justice. (Pet. 2.) The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

1. Whether taxpayer Church, which was formed and used by an individual for furthering a personal feud with a newspaper and public officials, is a tax-exempt organization within the meaning of Section 101 (6) of the Internal Revenue Code.

2. Whether the Court of Appeals erred in affirming the Tax Court's findings of fact establishing (a) the amount of the taxpayer's gross income, (b) absence of reasonable cause for failure to file income tax returns, which warranted the imposition of the delinquency penalties prescribed under Section 291 (a) of the Internal Revenue Code, and (c) that during each of the taxable periods involved, some part or all of the tax deficiencies assessed was, for purposes of the penalties prescribed in Section 293 (b) of the Internal Revenue Code, attributable to fraud with intent to evade tax.

3. Whether taxpayer Building Fund, to which the taxpayer Church gratuitously transferred some of its funds, thereby rendering itself insolvent, is liable as a transferee under Code Section 311.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved are set out in the Appendix, *infra*, pp. 18-21.

STATEMENT

The court below affirmed the Tax Court's decision sustaining the Commission's determination that (1) the taxpayer Church was liable for delinquent income taxes, fraud penalties, and penalties for failure to file returns, and (2) the taxpayer Building Fund was liable, to the extent of about $156,000, as transferee for these taxes and penalties. The facts, stated in detail in the findings of the Tax Court, may be summarized as follows:

The taxpayer Church, organized in October, 1945, was incorporated under the laws of Illinois, on January 4, 1946. (R. 71-72, 68.) From its inception its activities were chiefly directed by Harrison Parker, as "Chancellor." Parker's wife and sister-in-law were designated "trustees". (R. 68.)

Under its by-laws, the purported object of the Church was stated as follows (R. 72):

> This organization was founded as a means of disseminating through the U. S. Mails and otherwise, the revelations of God vouchsafed to its members, on religious, educational, political, benevolent, fraternal, charitable and reformatory subjects, the study of which will cause in the individuals who practice them, a mental development along scientific lines.
>
> In addition to promoting the above idea, the objects of this society, are to promote unqualified allegiance to the general government, protect the rights and liberties of American citizenship, and maintain national honor, union, and independence.

From 1934 to 1941, prior to his organization of taxpayer Church, Mr. Parker had been engaged in several highly publicized but unsuccessful lawsuits for libel and slander brought by him against the Chicago Tribune and its representatives. (R. 68-69, 70.) In 1941, after serving a jail term for contempt (R. 69), Parker wrote the city editor of the Chicago Tribune, in part, as follows (R. 70):

> Under the law of Illinois, religious organizations have the right, to publish newspapers. I have interested a religious organization, to publish a newspaper to compel the Cook County Grand Jury to indict in the 100 million dollar tax scandals. * * *
>
> I had in the County Jail, a nice rest and an opportunity to think, while I rested. Stock can be sold in a newspaper owned by a religious organization. I think the idea of a newspaper * * * is a good one. * * * I am going to put on the tail of Robert R. McCormick and the crooked Tribune law firm, a religious organization and its newspaper. * * *

After organization, while holding itself out as a "church," taxpayer never filed an exemption affidavit on the form prescribed by the Commissioner of Internal Revenue until April 18, 1950, after the taxable years here in issue had expired. (R. 67.) It carried on all of its activities through the mails, kept no membership roll book, had no meeting hall or auditorium, and held no church services or other religious meetings. (R. 76.) It kept no books or adequate records. It did not file any income tax re-

turns for the taxable years in issue. Neither did it seek or receive advice from counsel as to whether it was in fact an exempt organization. (R. 86.) Its principal office was maintained at La Grange, Illinois (R. 67), and its bank account was maintained at the Montague State Bank, Montague, Michigan, about 175 miles distant (R. 80.)

Using the taxpayer Church as a vehicle, Parker as "Chancellor" continued to wage his battle against the Chicago Tribune, its publisher, and others. The taxpayer, through Parker, wrote numerous letters and other publications for this purpose. (R. 72-75.) In July, 1947, taxpayer, through Parker, advised the Progressive Party's campaign manager that it could "raise $200,000 for a campaign fund to defeat the Chicago Tribune's Coalition ticket" (R. 77).

From the time of taxpayer's commencement of activities, assistance was secured from Mr. J. L. Stewart, an advertising executive and friend of Parker's. Through Stewart's agency, taxpayer inserted advertisements in various newspapers and publications throughout the country seeking subscriptions to taxpayer's various publications. Mailing lists were also purchased. Several publications advertised by taxpayer were widely sold at prices ranging from $1 to $5 a pamphlet. (R. 75, 76.) In addition, subscriptions were solicited at $2 each for a series of 12 lessons which Parker wrote. Approximately $6,000 a month was received from the sale of these lessons. (R. 76.)

On August 8, 1947, taxpayer engaged Stewart's

advertising agency, on a percentage basis, to conduct fund-raising "contests," purportedly to erect church buildings at La Grange, Illinois, and elsewhere. (R. 77, 78.) The first contest, commenced on September 6, 1947, was a puzzle contest, with the advertised grand prize varying in amount, depending upon whether a contestant mailed in $3, $6, $9 or $12 with his submitted solution. The highest prize advertised was $3,500. Taxpayer mailed letters to contestants who had paid less than $12 urging them to send additional sums to increase the initial fee to $12. (R. 78, 79.)

Similar contests carrying prizes of $250 but requiring no initial fee were likewise instituted. Although more than half the submitted solutions were correct, taxpayer wrote similar letters to successful and unsuccessful contestants announcing the puzzle with the $3,500 grand prize and urging all to submit entries together with a "donation." In addition, tie-breaker puzzles were sent to successful contestants in the first $250 contest. (R. 79.)

The solutions to the $3,500 contest were graded, with the amount of money received from each contestant being noted on the answer form; the answers were then bundled and boxed for storage. No other records were kept; nor were any judges selected to determine the winner. When complaints were received from contestants, the Post Office Department initiated an investigation some time prior to December 16, 1947. (R. 79.)

At the Post Office investigation hearing, it was

found that Parker, as Chancellor, had used the mails for fraudulent purposes. A suit by the taxpayer Church to enjoin the operation of this order was dismissed by the District Court for the Northern District of Illinois on July 16, 1948. (R. 79-80.) On April 9, 1948, an equity suit was filed in the Illinois courts against Parker and taxpayer to recover $230,574.26 alleged to have been received from contestants through fraudulent representations. (R. 80.)

The proceeds received both from the sale of taxpayer's publications and from the puzzle contests were not all deposited in its bank account, since taxpayer also dealt with various currency exchanges in La Grange and Chicago. (R. 82.) After opening its bank account on November 8, 1945, with an initial deposit of $1,000, taxpayer deposited an additional $6,700 in that year. During 1946, $47,023.60 was deposited; in 1947, $161,949.01; and, during the first six months of 1948, $359,094.03. (R. 80, 81.)

On December 10, 1947, taxpayer opened a separate account at the Montague State Bank entitled "Puritan Church Building Fund" on which Parker's wife and sister-in-law were authorized to draw. In December, 1947, $6,495.29 was deposited to this account. (R. 82.) At the Post Office Department hearing, Parker testified that this special account represented prize money for the puzzle contest. (R. 102.)

In early March, 1948, when the issuance of the fraud order was threatening (R. 83), taxpayer

drew $30,000 from its general account to purchase two $15,000 money orders payable to itself. Parker endorsed one of these to his sister-in-law for deposit in her personal account and retained the other. (R. 83.)

On March 16, 1948, Parker, as grantor, entered into an agreement which purported to create petitioner Puritan Church Building Fund, as a trust, with his wife and sister-in-law as trustees. (R. 85.) On March 31, 1948, three money orders—for $10,000, $2,500, and $5,000—were purchased with taxpayer's funds, the first in its own name and the latter two in the names of Color Printing Company and National Direct Mail. Parker later cashed the latter two money orders, with neither named payee receiving any of the proceeds. (R. 83-84.) On April 10, 1948, another $10,000 money order was purchased in taxpayer's name, which Parker later endorsed and cashed. (R. 84.)

On April 12, 1948, the "special account" at the Montague State Bank was closed out by the issuance of two bank money orders, one for $6,495.29 and the other for $150,000, drawn to Parker's wife and sister-in-law, as trustees of taxpayer. On May 13, 1948, both of these money orders were exchanged for money orders payable in identical amounts to "Puritan Church Building Fund, Anita Bird and Edith S. Parker, Trustees". Parker's wife and sister-in-law then endorsed these latter money orders "For deposit in the Greenwich Trust Co. Puritan Church Building Fund" on June 7, 1948. (R. 82.)

On May 13, 1948, when the money orders were drawn payable to the Building Fund, the taxpayer's sole remaining assets consisted of some office furniture and a bank balance of $254.81. (R. 82.) On that same date, taxpayer's debts with respect to deficiencies in income tax and penalties, as assessed herein, amounted to well in excess of $90,000 for the years 1945, 1946, and 1947. (R. 103.)

On June 22, 1948, another money order for $5,000 was purchased in taxpayer's name. (R. 83.) The funds used to purchase this instrument were not furnished by the Church, since its account at the Montague State Bank had been closed out the day before. (R. 84.) Later, Parker endorsed this money order, together with the retained $15,000 money order purchased on March 11, 1948, and the retained $10,000 money order purchased on March 31, 1948, and used the proceeds to purchase $30,000 in American Express Company checks payable to himself. (R. 83.)

Of the $30,000 in American Express Company checks, Parker cashed $8,300 and his wife $14,700. The remaining $7,000 was used to meet various expenditures including taxpayer's litigation fees, hotel bills for Parker and his wife, and costs incurred in publishing the "Liberty Bell", a pamphlet published by taxpayer in Washington, D. C. Mrs. Parker used $14,700 of these American Express Company checks in various ways. She sent money to Parker later in 1948, while he was serving two contempt of court sentences in Illinois; paid $2,311.41 as rent on the Parkers' apartment at the

Claridge Hotel, Washington, D. C.; cashed $3,500 in her own name; and issued $3,500 to Parker's sister-in-law on a regular basis at $50 per week. (R. 84.)

On June 23, 1948, with funds withdrawn from the Montague State Bank, Mrs. Parker opened a $10,000 bank account in New York City. In August, 1948, $4,500 was withdrawn to open an account in Washington, D. C. An additional $5,000 was transferred on September 5, 1949, to a safe deposit box in Washington. (R. 85.)

In connection with the institution of the puzzle contest in 1947, certain "loans", totaling $40,000, were alleged to have been made to taxpayer by one C. C. Waterbury. (R. 95.) At the trial Parker introduced a letter, purportedly written to one V. V. Sugg, Post Office Department inspector, alleging the repayment of this $40,000 in varying amounts, between the dates of August 8, 1947, and October 16, 1947. (R. 95-96.) A $5,000 money order was introduced which Parker testified had been endorsed in repayment of this loan. However, taxpayer's bank account indicated no deposits corresponding to the alleged receipts from Waterbury; no notes were issued or accounts maintained; and Waterbury did not testify at the trial. (R. 95-96.)

As indicated above, no church, meeting hall, or auditorium was ever constructed. (R. 76.) In August, 1947, the purpose alleged for the puzzle contest was to raise funds to build a "Meeting House" at LaGrange, Illinois. (R. 78.) On December 10, 1947, taxpayer opened its special account at the Montague State Bank. This account was referred to as the "Puritan Church Building

Fund". (R. 82.) In testimony before the Tax Court, Parker testified that this "Special Account" constituted prize money. (R. 102.) On March 6, 1948, ten days before the Building Fund was purportedly created (R. 85), a contract was allegedly entered into with one Harvey Wiley Corbett, an architect, which specified that "the Owner intends to erect a Meeting House * * * in or near the town of Lexington, Mass." Mr. Corbett was not called as a witness, and the letters purporting to spell out the alleged contract were unsigned and on paper having no letterhead or other identification. (R. 101-102.) In fact, no land was ever purchased at LaGrange, Illinois (R. 86), although Parker testified before the Post Office Department that land was plentiful (R. 101). In September, 1948, when a parcel of real estate was purchased, it was neither at Lexington, Massachusetts, nor at LaGrange, Illinois, but at Washington, D. C. (R. 86, 101.)

ARGUMENT

The Court of Appeals was correct in affirming the decision of the Tax Court. As the court below observed in its *per curiam* opinion (209 F.2d 306), the issues depended upon "findings of fact" which the Tax Court made "in great detail" and which "are supported by ample substantial evidence." With both lower courts in agreement concerning the facts established by the record, these findings will be accepted in the absence of a "very exceptional showing of error." *Comstock* v. *Group of Investors*, 335 U.S. 211, 214. There is no such showing here.

1. The primary issue is whether the taxpayer Church is exempt from income tax under Code Section 101 (6) (Appendix, *infra*, pp. 18-19). The conclusion of the courts below that it does not qualify for exemption since it was not "organized and operated exclusively" for religious purposes is supported by compelling evidence, as is apparent from a summary of the pertinent facts.

Harrison Parker, who had been jailed for contempt of court on several occasions as a result of his personal feuds with the Chicago Tribune and public officials (R. 72-75), conceived the idea of utilizing a "religious" organization as a vehicle for carrying on these activities (R. 70; Ex. EEE), and the taxpayer was subsequently organized and utilized by Parker for these feuds as well as for promoting Parker's own political views (R. 69-74, 77; Exs. OOO, PPPP, QQQQ, ZZZ, YYY, JJJ, MMM, UUU, VVV). The taxpayer's by-laws also demonstrate that it was not organized exclusively for religious purposes. (R. 72; Ex. KKKK.) The taxpayer kept no membership roll books, had no meeting hall or auditorium, conducted no church services and held no religious meetings. (R. 76.) The taxpayer—serving merely as an organ and money-raising device for its founder and operator, "Chancellor" Parker—actively sold publications (most of which contained vindictive attacks on numerous individuals, R. 75-76), and conducted puzzle contests in conjunction with an advertising agency (R. 77-79), the latter activities being subsequently terminated as constituting a use of the mails for fraudulent purposes (R. 79-80).

In a word, the evidence fully justifies the finding of the Commissioner and the two courts below that the taxpayer was not organized and operated exclusively for religious purposes. Whatever may be its status in the state where incorporated (see Pet. 22-23), a taxpayer does not qualify as an exempt organization if, in fact, the statutory standards for exemption have not been met. *Better Business Bureau* v. *United States,* 326 U.S. 279.

There are, moreover, additional reasons why the taxpayer is not exempt from tax under Section 101 (6). The evidence shows that a substantial portion of the funds received by the taxpayer from the puzzle contests and from the sale of its literature was deposited in the personal bank accounts of the taxpayer, his wife, and his sister-in-law and that some of this money was used for personal expenses. (R. 83-85.) The Tax Court expressly found that a portion of taxpayer's income inured to the benefit of these individuals. (R. 86.) While the Tax Court found it unnecessary to predicate its decision on this additional ground (R. 91), Section 101 (6) precludes exemption if any part of an organization's net earnings inure to the benefit of private individuals.

Furthermore, Section 29.101-2 of Treasury Regulations 111 (added by T.D. 5381, 1944 Cum. Bull. 188) requires that any organization, in order to establish its exempt status, must file an affidavit and other information with the Collector on prescribed forms setting forth the facts relating to its organization and operations, which information is for-

warded to the Commissioner "for determination of whether a particular organization is exempt." The taxpayer did not comply with this requirement of the Regulations and made no attempt to do so until after the deficiency notice was sent by the Commissioner and the case was awaiting trial by the Tax Court. (R. 67-68, 86, 91; Ex. EE.) This failure to comply with a mandatory requirement of the Regulations is an additional reason why the taxpayer is not entitled to an exempt status.[2]

2. The petition, under "Questions Presented" (p. 3), and under "Specification of Errors to Be Urged" (pp. 12-13), questions the correctness of the decision below in the determination of the amount of income earned and the imposition of penalties for failure to file returns and for fraud. Nowhere, however, does the petition enlarge upon these assertions, and no attempt has been made to prove what particular errors are supposed to have been committed. The Tax Court's opinion (R. 92-99, 104) shows a careful analysis of the evidence on each of these issues and, since there is no affirmative showing by the taxpayer of any precise claim of error, we need only point to the Tax Court's opinion as demonstrating the many respects in which the record evidence supports its findings.

3. The taxpayer Building Fund claims that the decision below is wrong in holding that it is subject

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[2] The ample reasons we have summarized for denying the exemption claim of taxpayer Church sufficiently refute the assertion (Pet. 14, 21) of a conflict with the wholly inapposite decision in *Trinidad* v. *Sagrada Orden*, 263 U.S. 578.

to transferee liability under Code Section 311 (Appendix, *infra*, p. 20). This contention appears to be grounded on the assumption that the funds transferred from taxpayer Church to taxpayer Building Fund were held in trust by the former for the latter and on the further assumption that the former was not insolvent when the transfer was made. Neither assumption is warranted.

The Tax Court, reviewing the record evidence, concluded that there was no proof that the persons who entered the puzzle contests and those who made donations unrelated to the puzzle contest intended to be settlors of a trust for a so-called building fund. (R. 100-101.) It also found that the taxpayer had not intention of erecting a church building at the time it solicited the funds which it subsequently transferred to taxpayer Building Fund. (R. 101-102.) While the taxpayer refers to general legal principles concerning the requirements necessary for a trust (Pet. 24-25), there is no demonstration that the Tax Court's factual findings are not warranted by the record evidence or that its findings do not support its ultimate conclusion that no trust existed. The sequence of events, as they related to the investigation instituted by the Post Office Department, indicates that the real purpose of transferring the funds was an attempt by the taxpayer Church to defeat the claims of its creditors, including the claims of the United States and of those who had entered the contests. (R. 79-86, 101-103.)

The transfer of the funds in question took place

on May 13, 1948, and it is plain that taxpayer Church was insolvent on that date. (R. 103.)[3] Accordingly, the Commissioner's assertion of transferee liability was proper. See *Pierce* v. *United States*, 255 U. S. 398; *Phillips-Jones Corp.* v. *Parmley*, 302 U. S. 233; *Phillips* v. *Commissioner*, 283 U. S. 589; *Healy* v. *Commissioner*, 345 U. S. 278; and *First Nat. Bank* v. *Commissioner*, 112 F. 2d 260 (C.A. 7th), certiorari denied, 311 U. S. 691.

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[3] There is no support for the taxpayer's assertion (Pet. 27) that the funds were transferred to taxpayer Building Fund on February 26, 1948, and that the Church was not insolvent at that time. On that date, taxpayer Church merely set up a special account (R. 82) and taxpayer Building Fund was not created until March 16, 1948 (R. 85). Withdrawal from the special account did not take place until April 12, 1948, and the transfer of the money to the Building Fund did not take place until May 13, 1948, at the earliest, or until June 7, 1948, at the latest. (R. 82.) Since the transfer of the money in question did not take place in February, it is immaterial whether taxpayer Church was or was not insolvent at that time. However, it may be observed that the assets which it is asserted were owned by the Church in February (Pet. 28) were actually held by the Parkers and were being used for their personal expenses (R. 84-85). As the Tax Court observed (R. 103), the lack of books and adequate records made it impossible to determine the extent of Church's other assets and its other debts so that, no matter which is the crucial date, the taxpayer did not rebut the *prima facie* case of insolvency established by the Commissioner.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MAY, 1954.

Internal Revenue Code:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"*Gross income*" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

* * * * *

(26 U. S. C. 1946 ed., Sec. 22.)

SEC. 101. EXEMPTIONS FROM TAX ON CORPORATIONS.

The following organizations shall be exempt from taxation under this chapter—

* * * * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder

or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

* * * * *

(26 U. S. C. 1946 ed., Sec. 101.)

SEC. 291. FAILURE TO FILE RETURN.

In case of any failure to make and file return required by this chapter, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: 5 per centum if the failure is for not more than thirty days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax bill shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3612(d)(1).

(26 U. S. C. 1946 ed., Sec. 291.)

SEC. 293. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY.

* * * * *

(b) *Fraud.*—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2).

(26 U. S. C. 1946 ed., Sec. 293.)

SEC. 311. TRANSFERRED ASSETS.

(a) *Method of Collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees.*—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

* * * * *

(26 U.S.C. 1946 ed., Sec. 311.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

Sec. 29.101(6)-1. *Religious, Charitable, Scientific, Literary, and Educational Organizations and Community Chests.*—In order to be exempt under section 101(6), the organization must meet three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes;

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(3) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

* * * * *

Sec. 29.311-1. *Claims in Cases of Transferred Assets.*—* * *

The term "transferee" as used in this section includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in section 112, and all other classes of distributees.

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